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Organization of the work of the Second Committee: Statement by the Chairman at the 47th meeting

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DOCUMENTS OF THE SECOND COMMITTEE

DOCUMENT A/CONF.62/C.2/L.64/Rev. 1

Malaysia: revised amendments to⁴¹ document A/CONF.62/C.2/L.49⁴²

[Original: English]
[5 May 1975]

1. Article 2

Paragraph 5 should be amended to read as follows:

"If the drawing of such baselines results in enclosing an area or areas of the sea separating two or more parts of an immediately adjacent neighbouring State, all rights which that State has traditionally exercised regarding the enclosed area or areas, such as rights, *inter alia*, relating to navigation, overflight, fishing, the laying of submarine cables and pipelines, and other legitimate interests shall enure and remain unaffected."

2. Article 4

The existing paragraph should be numbered 1, and a new paragraph 2 should be added as follows:

"The provisions of paragraph 1 of this article shall not apply to the provisions of paragraph 5 of article 2."

⁴¹ These amendments are submitted without prejudice to the right of Malaysia to submit further amendments to other provisions contained in document A/CONF.62/C.2/L.49.

⁴² See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. III (United Nations publication, Sales No. E 75.V.5).

DOCUMENT A/CONF.62/C.2/L.87

Organization of the work of the Second Committee: Statement by the Chairman at the 47th meeting

[Original: Spanish]
[26 March 1975]

I declare open the 47th meeting of the Second Committee. Today will be devoted to organization of work and the question of procedure.

First, distinguished representatives, allow me to express my thanks for the honour which you did me in electing me Chairman of this Committee yesterday. We are old collaborators in the endeavour to produce a new régime of the seas and, for that reason, the confidence and friendship that have developed throughout the years promise the best of relations in our work. I shall always be prepared to listen to suggestions, to hear proposals and to make my own contribution wherever possible, so that at this session we may obtain tangible results, which is what our Governments, our peoples and we ourselves demand.

As regards the organization of our work, I have had very little opportunity for consultations owing to the limited time available. The officers of the Committee met this morning and gave their support to the suggestions which I shall place before you today.

The Third United Nations Conference on the Law of the Sea begins its third session at Geneva under distinct pressures; among other things, to achieve tangible and lasting results which will lead to the convention on the sea. To this end, the Third Conference has at its disposal the work carried out during the Caracas session. It is not therefore a question of inventing or re-inventing everything, but of continuing and to a certain extent adapting what has already been accomplished. An instrument as complex as

the convention on the law of the sea must be built step by step, by a method that permits the full expression of national positions and then allows opportunities for establishing points of convergence, leading finally to compromise, accommodation and agreement. Thus what is individual will gradually become common to all, with the national giving way to the international, to that which is of the community. Everything has its time, and in my opinion Geneva is the time for finding general agreement on the basic items before the Third United Nations Conference on the Law of the Sea.

The plan of action should reflect what can reasonably be expected to be achieved at Geneva. In this connexion, following six years of preparatory work by the sea-bed Committee and one year's activity by the third Conference, it would seem right to attempt to conclude the process, now that many representatives feel that the time is ripe for fundamental negotiation. Geneva could give body to the future convention on the law of the sea. In taking our leave after eight weeks we should have a definite answer to the question of the new order for the oceans, even though details and refinements may require consideration later. It would be pointless to spell out the reasons underlying the calls for a fixed and speedy end to the present exercise.

In relation to the Caracas session, the Geneva session should be one of continuity, following up on what was done at Caracas and identifying and establishing the main substance of the future convention on the law of the sea; these are possible co-ordinates within which the activities of the present session might be envisaged as lying. Procedures would be devised to satisfy the criteria adopted.

Of course, procedures must be modified and recast as work progresses. Various stages may therefore be envisaged. However, to avoid speculation, it would be preferable for each decision to be taken when the precise circumstances arise; it would therefore appear advisable today to settle methods for what we might call the initial stage, which might be long or short, depending on the circumstances.

In this connexion, continuity would lead us to confirm the decisions on procedure adopted at Caracas and to use the working documents produced there. I should remind the Committee that documents were prepared on all the items allocated to the Second Committee. For the record, allow me to read out the Committee's decision on this point, which appears in the statement of activities of the Committee contained in document A/CONF.62/L.8/Rev.1.⁴² Paragraph 7 reads as follows:

"The Committee, upon nearing the completion of the first stage of its work, approved, at its 9th informal meeting on 15 August 1974, a proposal submitted by the Chairman on the organization of a second stage of its work. The proposal, as adopted, was contained in the following statement made by the Chairman at the 43rd meeting of the Committee on 23 August 1974:

"1. Priority will be given to the completion of the first stage of the Committee's work, namely the consideration of the informal working papers which still have to be discussed and their possible revision.

"2. Simultaneously, whenever time was available, the Committee will undertake a second reading of the items allocated to it, which will be regrouped as follows:

"Group I: Item 2 (Territorial sea); item 4 (Straits used for international navigation); item 16 (Archipelagos); and item 3 (Contiguous zone). Item 17 (Enclosed and semi-

enclosed seas), item 18 (Artificial islands and installations), and item 19 (Régime of islands) can also be discussed in so far as they relate to the other items included in this group.

"Group II: Item 5 (Continental shelf); item 6 (exclusive economic zone); item 7 (Coastal State preferential rights or other non-exclusive jurisdiction over resources beyond the territorial sea); item 10 (Rights and interests of shelf-locked States and States with narrow shelves or short coastlines); and item 11 (Rights and interests of States with broad shelves). Item 9 (Land-locked countries), item 17 (Enclosed and semi-enclosed seas), item 18 (Artificial islands and installations), and item 19 (Régime of islands) can also be discussed in so far as they relate to the other items included in this group.

"Group III: Item 8 (high seas) and item 24 (Transmission from the high seas). Item 18 (Artificial islands and installations) and item 19 (Régime of islands) can also be discussed in so far as they relate to the other items included in this group.

"3. The aim of this second reading is to reduce, as far as possible, the number of alternative formulations in the working papers. Consequently, discussions should be focused on differences of substance, not on questions of drafting, except where new wording can help to combine alternative formulations.

"4. There will be an opportunity for delegations to introduce proposals in formal meetings of the Committee. It is to be hoped that these new proposals will be primarily designed to consolidate texts and thus reduce the number of variants. However, most of the work in the second stage will be carried out at informal meetings."

It has thus been agreed that there should be a second reading of the document produced at Caracas. We cannot, of course, disregard the arguments of the sceptics, based on their experience of attempts to produce consolidated texts. The experience of the sea-bed Committee in 1973 showed how difficult it is to narrow down alternatives.

The purpose of reconsidering what was produced at Caracas would be to work towards consolidated texts. Such reconsideration would be complemented by informal consultations, at which everything humanly feasible would be done and possible understandings would be attempted between representatives who had expressed divergent trends in debate. This parallel line of action might indicate the real measure of agreement obtainable, since we well know that a formal meeting can give rise to working material and the identification of trends and positions, but not to any real rapprochement on such complex matters as the new régime of the seas. The results of these consultations would be submitted periodically to plenary meetings.

In addition, there would be the activities of the working groups which delegations have already set up on their own initiative or which they may establish in the future. These working groups should be encouraged in every way from the beginning of the present session. Some already exist and others may be created. This parallel activity would be of the greatest help in producing bases for general agreement.

From the point of view of method alone, the problems must be divided and approached from various angles and by different means. As far as the political treatment and the legal treatment of questions are concerned, although the two are theoretically distinguishable, in practice they are so intermingled that an imperceptible and unconscious transi-

tion takes place from one to the other. However, agreement might be envisaged on elements rather than on finished and polished formulae. Having consulted the officers, I should like specifically to place before the Committee for consideration the points which might form the outline of our procedure in this first stage of the work.

1. Review of the documents produced at Caracas, on the basis of the grouping of the items decided on there, with a view to elaborating consolidated texts. In this connexion, the basic text would be the working paper on main trends contained in document A/CONF.62/L.8/Rev.1, which is a systematic compilation of the documents produced by the Second Committee in informal meetings at Caracas.

2. Informal consultations on the views expressed during the review of the above document. An attempt would be made to focus the process of consultation on the essential items. The Chairman and the officers, with the assistance of the Secretariat, would be authorized to carry on these consultations and would report on them to the Committee periodically.

3. Encouragement of working groups already in existence or which delegations may decide to set up. In that connexion, the Secretariat would be asked to provide the necessary meeting rooms and interpretation services.

4. Invitation to delegations which have maintained differing views, set out in alternative formulae, to meet and attempt to reach compromises, and to report in due course on the results of their consultations.

5. Formal meetings for the official submission of new proposals by States or groups of States or to hear progress reports on consultations.

In order that sufficient time, physical facilities and staff may be available, so as to enable intensive consultations to be carried on and permit working groups to operate to the full, it is suggested that the Second Committee should hold meetings only in the mornings, leaving the afternoons free for the other activities.

It is probable that the progress of this session will be measured not by the number of formal and informal meetings that are held but by the agreements of substance which may be reached. In this connexion, the working groups and consultations would seem to be lines of action parallel and complementary to the discussion which may take place here in informal meetings. Various channels may operate at the same time, and perhaps it is necessary that they should do so. I should like to suggest that the Committee decide to organize its work in this preliminary stage in accordance with the five points I have indicated. As I have already said, the officers of the Committee are in complete agreement with this.

DOCUMENT A/CONF.62/C.2/L.88

Ecuador: draft article on the nature and characteristics of the territorial sea

*[Original: Spanish]
[17 April 1975]*

1. The coastal State exercises sovereignty, beyond its coasts and its internal or archipelagic waters, over an adjacent area described as the territorial sea.

The coastal State also exercises sovereignty over the air space above the territorial sea, and over its bed and subsoil.

This sovereignty is exercised in accordance with the provisions of this Convention and allows a plurality of régimes in the cases and for the purposes indicated hereinafter.

2. By virtue of its sovereignty over the territorial sea, the coastal State shall adopt the measures necessary for its security and shall exercise jurisdiction particularly with respect to:

(a) The exploration, exploitation, conservation and administration of non-renewable and renewable resources, whatever the characteristics and habits of the latter may be;

(b) Other economic activities including the production of energy by utilization of water, currents and winds;

(c) The preservation of the marine environment, including control and elimination of pollution, having regard to the provisions of international conventions, co-operation with other States and the recommendations of international technical bodies;

(d) The authorization, regulation and control of scientific research, including participation in such research and in its results;

(e) The emplacement and use of artificial islands, installations, structures and devices of any kind;

(f) The relevant customs, fiscal, immigration and sanitary policies;

(g) The other rights inherent in the sovereignty of the coastal State.

3. The rights of the coastal State shall be exercised without prejudice to the limitations established by this Convention.

4. Within the territorial sea the coastal State shall fix a limit near to its coasts within which the ships of all States shall enjoy the right of innocent passage. Beyond this internal limit, the ships and aircraft of all States shall enjoy freedom of passage over the territorial sea.

5. Within the internal limit of the territorial sea, the authorization of the coastal State shall be required for the laying of cables and pipelines. Beyond this internal limit any State, after previously informing the coastal State, may lay pipelines and cables and maintain them, without